



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2008-0486; EPA-R01-OAR-2008-0223; EPA-R01-OAR-2008-0447; EPA-R01-OAR-2009-0358; A-1-FRL-9950-96-Region 1]**

**Approval and Promulgation of Air Quality Implementation  
Plans; Maine, New Hampshire, Rhode Island and Vermont; Interstate Transport of Air  
Pollution**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted by the Maine Department of Environmental Protection (ME DEP), the New Hampshire Department of Environmental Services (NH DES), the Rhode Island Department of Environmental Management (RI DEM) and the Vermont Department of Environmental Conservation (VT DEC). These SIP revisions address provisions of the Clean Air Act that require each state to submit a SIP to address emissions that may adversely affect another state's air quality through interstate transport. The EPA is proposing that all four States have adequate provisions to prohibit in-state emissions activities from significantly contributing to, or interfering with the maintenance of, the 2008 ozone National Ambient Air Quality Standards (NAAQS) in other states. The intended effect of this action is to propose approval of the SIP revisions submitted by Maine, New Hampshire, Rhode Island, and Vermont. This action is being taken under the Clean Air Act.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit your comments, identified by EPA-R01-OAR-2008-0486 for comments pertaining to our proposed action for Maine, EPA-R01-OAR-2008-0223 for comments pertaining to our proposed action for New Hampshire, EPA-R01-OAR-2008-0447 for comments pertaining to our proposed action for Rhode Island, or EPA-R01-OAR-2009-0358 for comments pertaining to our proposed action for Vermont, at <http://www.regulations.gov>, or via email to [Arnold.Anne@EPA.gov](mailto:Arnold.Anne@EPA.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or at the U.S. Environmental Protection Agency, Region 1, Air Programs Branch, 5 Post Office Square, Boston, Massachusetts. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The interested persons wanting to

examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Burkhart, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1664; Burkhart.Richard@epa.gov.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. What should I consider as I prepare my comments for EPA?
- II. Rulemaking Information
- III. Proposed Action
- IV. Statutory and Executive Order Reviews

**I. What should I consider as I prepare my comments for EPA?**

When submitting comments, remember to:

- 1. Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).

2. Follow directions - EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

## **II. Rulemaking Information**

EPA is proposing to approve SIP submissions from the ME DEP, the NH DES, the RI DEM and the VT DEC. The SIP revisions were submitted on the following dates: October 26, 2015 (ME); November 17, 2015 (NH); June 23, 2015 (RI) and November 2, 2015 (VT). These SIP submissions address the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS.<sup>1</sup>

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<sup>1</sup> We note that while the SIP revisions submitted by Maine, New Hampshire, and Rhode Island address only the transport elements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS, Vermont's submittal addresses all of the infrastructure elements of CAA section 110(a)(2) for the 2008 ozone NAAQS. Today's action, however, only addresses the transport elements of Vermont's submittal.

On March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). The CAA requires states to submit, within three years after promulgation of a new or revised standard, SIPs meeting the applicable “infrastructure” elements of sections 110(a)(1) and (2). One of these applicable infrastructure elements, CAA section 110(a)(2)(D)(i), requires SIPs to contain “good neighbor” provisions to prohibit certain adverse air quality effects on neighboring states due to interstate transport of pollution. There are four sub-elements, or “prongs,” within CAA section 110(a)(2)(D)(i). This action addresses the first two sub-elements of the good neighbor provisions, at CAA section 110(a)(2)(D)(i)(I), often referred to as “prong one” and “prong two.” These sub-elements require that each SIP for a new or revised standard contain adequate provisions to prohibit any source or other type of emissions activity within the state from emitting air pollutants that will “contribute significantly to nonattainment” (prong 1) or “interfere with maintenance” (prong 2) of the applicable air quality standard in any other state. We note that the EPA has addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the eastern portion of the United States in several past regulatory actions.<sup>2</sup> We most recently promulgated the Cross-State Air Pollution Rule (CSAPR), which addressed CAA section 110(a)(2)(D)(i)(I) in the eastern portion of the United States.<sup>3</sup> CSAPR addressed multiple national ambient air quality standards, but did not address the 2008 8-hour ozone standard.<sup>4</sup> On December 3, 2015, the EPA proposed an update to CSAPR to address the 2008 ozone standard, referred to as the CSAPR Update.<sup>5</sup>

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<sup>2</sup> NO<sub>x</sub> SIP Call, 63 FR 57371 (October 27, 1998); Clean Air Interstate Rule (CAIR), 70 FR 25172 (May 12, 2005); Cross-State Air Pollution Rule (CSAPR), 76 FR 48208 (August 8, 2011).

<sup>3</sup> 76 FR 48208.

<sup>4</sup> CSAPR addressed the 1997 8-hour ozone, and the 1997 and 2006 fine particulate matter NAAQS.

<sup>5</sup> Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 80 FR 75706 (Dec. 3, 2015).

Each of the four states' SIP submissions cited modeling recently conducted by EPA to support the proposed CSAPR Update, asserting that, based on that modeling, emissions from the states did not significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in any other state.

In the original CSAPR rulemaking, the EPA used detailed air quality analyses to determine whether an eastern state's contribution to downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered "linked" to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute to, or interfere with maintenance of, the standard in those downwind areas. If a state exceeded that threshold, the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

In CSAPR, the EPA proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate.<sup>6</sup> The EPA evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, the EPA compiled the contribution modeling results for CSAPR to analyze the impact of different possible

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<sup>6</sup> CSAPR proposal, 75 FR 45210, 45237 (August 2, 2010).

thresholds for the eastern United States. The EPA's analysis showed that the one-percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded.<sup>7</sup> In addition, the EPA determined that it was important to use the one-percent threshold because there are adverse health impacts associated with ambient ozone even at low levels.<sup>8</sup> The EPA also determined that a lower threshold such as 0.5 percent would result in relatively modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. The EPA determined that a "0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors — an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable."<sup>9</sup>

In the final CSAPR, the EPA determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and the EPA's previous use of a one-percent threshold in CAIR. The EPA used a single "bright line" air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 ppm.<sup>10</sup> The projected contribution from each state was averaged over multiple days with projected high

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<sup>7</sup> See also Air Quality Modeling Final Rule Technical Support Document, Appendix F, Analysis of Contribution Thresholds, Docket ID # EPA-HQ-OAR-2009-0491

<sup>8</sup> CSAPR, 76 FR 48208, 48236–37 (August 8, 2011)

<sup>9</sup> Id.

<sup>10</sup> Id.

modeled ozone, and then compared to the one-percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm.<sup>11</sup>

On August 4, 2015, the EPA issued a Notice of Data Availability (NODA) containing air quality modeling data that applies the CSAPR approach to contribution projections for the year 2017 for the 2008 8-hour ozone NAAQS.<sup>12</sup> This is the same modeling used to support the proposed CSAPR Update. The moderate area attainment date for the 2008 ozone standard is July 11, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017 ambient ozone data. Therefore, 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. The EPA used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. The EPA used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case NO<sub>x</sub> and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that

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<sup>11</sup> Id.

<sup>12</sup> See 80 FR 46271 (August 4, 2015) (Notice of Availability of the Environmental Protection Agency's Updated Ozone Transport Modeling Data for the 2008 Ozone National Ambient Air Quality Standard (NAAQS)).



covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and the supporting technical documents have been included in the docket for this SIP action.

The modeling data released in the NODA and the proposed CSAPR Update are the most up-to-date information the EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems. The EPA is proposing that states with contributions to downwind nonattainment and maintenance receptors less than one percent of the 2008 ozone NAAQS do not significantly contribute to nonattainment or interfere with maintenance pursuant to CAA section 110(a)(2)(D)(i)(I).<sup>13</sup>

For purposes of the 2008 ozone NAAQS, each of the four states at issue in this action have contributions below this significance threshold. The NODA modeling indicates that Maine's ozone contribution to any projected downwind nonattainment site is 0.00 ppb (parts per billion) and Maine's largest contribution to any projected downwind maintenance-only site is 0.08 ppb. The NODA modeling indicates that New Hampshire's largest ozone contribution to any projected downwind nonattainment site is 0.02 ppb and New Hampshire's largest ozone contribution to any projected downwind maintenance-only site is 0.07 ppb. The NODA modeling indicates that Rhode Island's largest ozone contribution to any projected downwind nonattainment site is 0.02 ppb and Rhode Island's largest contribution to any projected downwind maintenance-only site is 0.08 ppb. The NODA modeling indicates that Vermont's largest ozone contribution to any projected downwind nonattainment site is 0.01 ppb and Vermont's largest contribution to any projected downwind maintenance-only site is 0.05 ppb.

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<sup>13</sup> The proposed CSAPR Update also proposes to use one percent as the screening threshold to identify upwind states that are "linked" to downwind air pollution problems. *See* 80 FR 75714.

These ozone contribution values (for Maine, New Hampshire, Rhode Island, and Vermont) are all well below the one percent screening threshold of 0.75 ppb and, therefore, there are no identified linkages between these four states and 2017 downwind projected nonattainment and maintenance sites.<sup>14</sup>

As noted earlier, Maine's October 25, 2015, New Hampshire's November 17, 2015, Rhode Island's June 23, 2015, and Vermont's November 2, 2015 SIP submittals all cite the CSAPR Update modeling discussed above and all conclude that each state neither significantly contributes to nonattainment, nor interferes with maintenance, in downwind states with respect to the 2008 ozone NAAQS. EPA agrees with these conclusions and is, therefore, proposing to approve these SIP revisions.

### **III. Proposed Action**

EPA is proposing to approve the SIP revisions submitted by the states on the following dates as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS: October 26, 2015 (Maine); November 7, 2015 (New Hampshire); June 23, 2015 (Rhode Island); and November 2, 2015 (Vermont). EPA has reviewed these SIP revisions and has found that they satisfy the relevant CAA requirements discussed above. EPA is soliciting public comments on the issues discussed in this document, and will consider those comments before taking final action.

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<sup>14</sup> Note that the EPA has not done an assessment to determine the applicability for the use of the one percent screening threshold for all western states that contribute above the one percent threshold to identified air quality problems. There may be additional considerations that may impact regulatory decisions regarding "potential" linkages in the west identified by the modeling.

#### **IV. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 1, 2016.

H. Curtis Spalding,  
Regional Administrator,  
EPA New England.

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